

BOARD OF APPEALS CASE NO. 5164

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BEFORE THE

APPLICANTS: Bruce & Jacqueline Lessig

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ZONING HEARING EXAMINER

REQUEST: Variance to construct an attached garage within the required 25 foot front yard setback; 216 Gaitner Place, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/3/01 & 8/8/01

HEARING DATE: October 8, 2001

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Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Bruce W. Lessig and Jacqueline R. Lessig, are requesting a variance pursuant to Section 267-36B, Table VI, of the Harford County Code, to allow an attached garage within the required 25 foot front yard setback in an R3 District.

The subject parcel is located at 216 Gaitner Place, Abingdon, Maryland 21009 in the First Election District, and is more particularly identified on Tax Map 61, Grid 1E, Parcel 337, Lot 227, in the subdivision of Constant Friendship Estates. The parcel contains approximately .347 acres.

The Applicant, Ms. Lessig, appeared and testified that she and her husband, the Co-Applicant, Bruce W. Lessig, are the owners of the subject property. She stated that she had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein. She did state, that for security and economic reasons, she is opposed to the Department's recommendation that the Applicants be required to plant trees along the property between their lot and lot 87.

Ms. Lessig described her property as an odd shaped panhandle lot improved by a split foyer, single family detached dwelling. The property is also improved by a deck, a patio and a small fenced area to the left rear of the dwelling. The house is located toward the front of the property, and is positioned at an angle on the lot. There is a large concrete parking pad located to the front right side of the house. The Applicant stated that she and her husband propose to build an attached garage on the right side of the house. The Homeowner's Association does not allow construction of detached garages in Constant Friendship Estates.

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Ms. Lessig testified that due to the setback line on the right side of the property, the way in which the builder located their house, and the design of the dwelling, the proposed location is the only place on her property where an attached garage can practically be built. According to the witness, one side of the back of the dwelling has a 2 foot by 15 foot overhang, and the other side has a sliding glass door with an attached deck on the upper level. This makes construction of an attached garage on the rear of the home impossible.

The witness did not introduce a blueprint or drawing of the proposed garage, however she testified that it will be similar in size and appearance to other attached garages in her neighborhood. The witness also stated that the garage will look exactly like the existing side of the house, but will have a lower roof. According to Ms. Lessig, one corner of the proposed garage will encroach into the front yard setback, as shown on Attachment 3 to the Department of Planning and Zoning Staff Report. At its closest point, the proposed garage will be 14 feet away from the property line.

The witness then described several photographs attached to the Department of Planning and Zoning Staff Report. Attachments 7A and 7C show the front of the property, the house, and the existing concrete parking pad. Attachment 7D shows the back, and right side of the existing dwelling, where the proposed attached garage will be located. Attachment 7E shows the open space area behind the property.

Finally, the witness testified that the proposed garage will be similar to other attached garages found in Constant Friendship Estates. According to the witness every house in the neighborhood, except for hers, and the house next door, has an attached garage. For this reason, the witness does not believe that the proposed garage will have any adverse impact on neighboring properties.

Ms. Doris Schwabland, the owner of adjoining lot number 87, appeared and testified that her house is located directly behind the right side of the Applicant's property. She stated that she was present in support of the application. According to the witness, she does not believe that the proposed garage will have any adverse impact on her property.

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She further testified that she does not agree with the condition proposed by the Department of Planning and Zoning requiring the Applicants to plant trees along the property line between the proposed garage and her lot. She expressed concern, for security reasons, that she and the Applicant's would no longer be able to see each others' homes. She also indicated that the trees would be in the way if she ever wanted to build a fence between the properties.

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that:

"The proposed location is the only practical area suitable for the attached garage based on the configuration of the property. The parking pad is currently located closer to the property line than the proposed garage will be.

... The variance if granted should not adversely impact the intent of the Code and or the adjacent properties."

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Bruce W. Lessig and Jacqueline R. Lessig, are requesting a variance pursuant to Section 267-36B, Table VI, of the Harford County Code, to allow an attached garage within the required 25 foot front yard setback in an R3 District. The proposed addition would reduce the front yard setback from 25 feet to 14 feet. Harford County Code § 267-34C, Table VI: Design Requirements for Specific Uses in an R3 Urban Residential District, provides for a minimum 25 foot front yard depth.

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Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If, and only if, the subject property is found to be unique, the trier of fact may proceed to the second prong of the test. The second prong involves a determination of whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The lot is an irregular shaped panhandle lot. The existing dwelling is located to the front of the lot, and is constructed at an angle across the front of the property. The current parking pad is closer to the front property line than the proposed garage will be. Thus, the first prong of the Cromwell test has been met.

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Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the Homeowner's Association prohibits the construction of detached garages in Constant Friendship Estates. The proposed location is the only practical place on the property where an attached garage can be constructed. The existing dwelling is a split foyer. The rear of the house has an overhang on one side, and a sliding glass door and attached deck on the other side. If the requested variance is not granted, the Applicants will be unable to construct a garage on their property, and will, therefore, be denied property rights commonly enjoyed by other homeowners in Constant Friendship Estates.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. Virtually all of the other houses in the Constant Friendship Estates neighborhood have attached garages. In addition, the proposed garage will look exactly like the side of the existing dwelling, but with a lower roof.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date NOVEMBER 6, 2001

Rebecca A. Bryant
Zoning Hearing Examiner